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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/530,209	06/13/00	INZE	D 13545

HM12/0927

EXAMINER

COLLINS, C

ART UNIT	PAPER NUMBER
1638	5

DATE MAILED:

09/27/01

Please find below and/or attached an Office communication concerning this application or proceeding.

**Commissioner of Patents and Trademarks**

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/530,209	INZE ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Cynthia Collins	1638

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 13 June 2000.

2a)  This action is **FINAL**.                  2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-29 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) \_\_\_\_\_ is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) 1-29 are subject to restriction and/or election requirement.

## **Application Papers**

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12)  The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a)  The translation of the foreign language provisional application has been received.

15)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)      4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)      5)  Notice of Informal Patent Application (PTO-152)  
3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.      6)  Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Restriction is required under 35 U.S.C. 121 and 372.
2. This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.
3. In accordance with 37 CFR 1.499, applicant is required, in response to this action, to elect a single invention to which the claims must be restricted.

**Group I**, claim(s) 1-4, 6-10, and 27-28, drawn to a DNA sequence encoding a mitogenic cyclin, a method for identifying and obtaining mitogenic cyclins, a vector, to a host cell, a method for the production of a mitogenic cyclin, a diagnostic composition, and a use of the DNA sequence or vector.

**Group II**, claim(s) 5 and 27-28, drawn to a nucleic acid molecule of at least 15 nucleotides in length that hybridizes with a DNA sequence encoding a mitogenic cyclin, a diagnostic composition, and a use of the nucleic acid molecule.

**Group III**, claim(s) 11 and 27-28, drawn to a mitogenic cyclin, a diagnostic composition, and a use of the mitogenic cyclin.

**Group IV**, claim(s) 12 and 27-28, drawn to an antibody that specifically recognizes a mitogenic cyclin, a diagnostic composition, and a use of the antibody.

**Group V**, claim(s) 13-18 and 23, drawn to a method for the production of transgenic plants comprising a DNA sequence encoding a mitogenic cyclin, a transgenic plant or plant cell wherein expression of the DNA sequence results in enhanced plant cell division and/or growth and/or reduced sensitivity to environmental stress, and harvestable parts.

Group VI, claim(s) 19-23, drawn to a transgenic plant or plant cell wherein the synthesis of a mitogenic cyclin is reduced and wherein there is a deficiency in plant cell division and/or growth, and harvestable parts.

Group VII, claim(s) 24-29, drawn to a method for identifying and obtaining an activator or inhibitor of cell division, a method of producing a plant herbicide, a compound, a diagnostic composition, and a use of a compound.

4. The inventions listed as Groups I-VII do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

5. The technical feature linking Groups I-VII appears to be a DNA sequence encoding a mitogenic cyclin.

6. However, a DNA sequence encoding a mitogenic cyclin is obvious or anticipated over either of SONI et al. (January 1995, Plant Cell, Vol. 7, pages 85-103, Applicant's International Search Report) or DAHL et al. (November 1995, Plant Cell, Vol. 7, pages 1847-1857, Applicant's International Search Report).

7. Therefore, the technical feature linking the inventions of Groups I-VII does not constitute a special technical feature as defined by PCT Rule 13.2, because it does not define a contribution over the prior art.

8. Furthermore, the inventions of Groups I-VII are distinct products. The DNA sequence of Group I, the nucleic acid molecule of Group II, the mitogenic cyclin of Group III, the antibody of Group IV, the transgenic plant and plant cell of Group V, the transgenic plant and plant cell of Group VI, and the compound of Group VII are structurally and functionally distinct from each

other, and can be used in different methods. The inventions of Groups I-V and VII are also distinct methods. The method for identifying and obtaining mitogenic cyclins, the method for the production of a mitogenic cyclin, and the use of the DNA sequence or vector of Group I, the use of the DNA molecule of Group II, the use of the mitogenic cyclin of Group III, the use of the antibody of Group IV, the method for the production of transgenic plants of Group V, and the method for identifying and obtaining an activator or inhibitor of cell division, the method of producing a plant herbicide, and the use of a compound of Group VII are distinct from each other because they employ different method steps and/or structurally and functionally different components, and because they result in the production of different products or different effects.

9. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143). Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Remarks***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cynthia Collins whose telephone number is (703) 605-1210. The examiner can normally be reached on Monday-Friday 8:45 AM -5:15 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paula Hutzell can be reached on (703) 308-4310. The fax phone numbers for the

Art Unit: 1638

organization where this application or proceeding is assigned are (703) 308-4242 for regular communications and 1 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

CC

September 25, 2001

ELIZABETH F. McELWAIN  
PRIMARY EXAMINER  
GROUP 1600

